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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

RONNIE MAURICIO BARAHONA,

Defendant and Appellant.

C068668

(Super. Ct. No. 10-
0002)

This is an appeal pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

About 4:30 a.m. on December 30, 2009, officers responded to a report of suspicious activity at the intersection of 16th and P Streets in Sacramento. The caller had observed two men attempting to break into an ATM using a blow torch and they were leaving in a pickup truck. Officers saw the pickup, later determined to be stolen, and activated their lights and sirens in an attempt to stop the pickup. Instead of stopping, the

driver, later identified as defendant Ronnie Mauricio Barahona, led the officers, who were in separate patrol cars, on a high-speed chase through residential streets, running stop signs, and eventually merging onto westbound Interstate 80. Defendant exited the highway into West Sacramento, entered a residential area, drove onto a lawn, almost colliding with the house, sideswiped a Chevy Blazer, and continued until he struck a fire hydrant. Defendant and John Ditgen then fled on foot.

Officers Michael Cuevas got out of his patrol car and Officer Michael Stoltzfus attempted to cut defendant off with his patrol car. Defendant fired a gun once, paused, and then fired two more times. Officer Stoltzfus got out of his patrol car. Defendant continued to run, turned and fired his gun. Officer Stoltzfus claimed that defendant fired the fourth shot directly at him. The officers lost sight of defendant.

Officers found Ditgen hiding in a backyard of a residence. Three hours later, officers found defendant hiding in the rafters of a detached garage. Defendant assisted officers in recovering his gun, a loaded semiautomatic firearm.

Defendant testified at trial. He admitted that he attempted to break into the ATM with a blow torch, drove a stolen truck, evaded the police who were chasing him, drove dangerously, and hit other vehicles and the fire hydrant. He had the gun for protection and had put the gun in the stolen pickup truck a day and a half earlier. The gun was loaded with hollow point bullets. He fled on foot and never looked back as he ran. In an attempt to scare the officers, he fired the first

shot when he was in the street, two more shots when he was on the grass, and the fourth shot into the ground. He denied that he aimed the gun at either officer.

An information charged defendant with the attempted murder of Officers Stoltzfus and Cuevas (Pen. Code, §§ 187/664; counts 1 and 2, respectively), assault with a semiautomatic firearm upon both officers (Pen. Code, § 245, subd. (d)(2); counts 3 and 4), vehicle theft or unauthorized use (Veh. Code, § 10851, subd. (a); count 5), receiving stolen property (Pen. Code, § 496; count 6), felony evading (Veh. Code, § 2800.2; count 7), hit and run, a misdemeanor (Veh. Code, § 20002, subd. (a); count 8), and resisting arrest, a misdemeanor (Pen. Code, § 148, subd. (a)(1); count 9). In connection with counts 1 through 4, it was further alleged that defendant personally and intentionally discharged a firearm (Pen. Code, § 12022.53, subd. (c)).

At trial, defendant entered a guilty plea to counts 5, 7, 8, and 9, and count 6 was dismissed. Prior to the court instructing the jury, the information was amended, with defense counsel's concurrence, to add four counts of discharging a firearm in a grossly negligent manner, one for each gunshot (Pen. Code, § 246.3, subd. (a); counts 10, 11, 12, and 13) with a special finding that defendant personally used a firearm (Pen. Code, § 1192.7, subd. (c)(8)).

A jury convicted defendant on counts 3 (Officer Stoltzfus), 10, 11, 12 and 13. In connection with count 3, the jury found the firearm use allegation to be true. In connection with counts 10 through 13, the jury specially found that defendant

personally used a firearm. The jury acquitted defendant on count 4 (Officer Cuevas). The jury was deadlocked on counts 1 and 2 and a mistrial was declared on those counts.

At sentencing, counts 1 and 2 were dismissed upon the prosecutor's motion. The court sentenced defendant to state prison for an aggregate term of 29 years: the midterm of seven years for the assault offense (count 3) plus a consecutive 20-year term for firearm use/discharge; a consecutive one-third the midterm or eight months for vehicle theft/unauthorized use (count 5); a consecutive one-third the midterm or eight months each for two counts of discharging a firearm (counts 10 (first shot) and 11 (second shot)); concurrent sentences on counts 7 (evading), 8 (hit and run), 9 (resisting), and 12 (third shot); and a stay on count 13 (fourth shot). The court imposed an \$1,800 restitution fine, an \$1,800 parole revocation restitution fine, and victim restitution in the amount of \$25,528.89. The court awarded 623 days of presentence custody credit.

Defendant appeals.

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant. Having undertaken an

examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

We note an error in preparation of the abstract of judgment. The abstract erroneously reflects that count 7 was receiving stolen property. Defendant entered a plea to count 7, *felony evading*, under *Vehicle* Code section 2800.2. We will order the abstract corrected accordingly.

DISPOSITION

The trial court is directed to prepare a corrected abstract of judgment to reflect that count 7 was felony evading under Vehicle Code section 2800.2 and to forward a certified copy of the corrected abstract to the Department of Corrections and Rehabilitation. The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

HOCH, J.